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**Before the
Federal Communications Commission DA 96-814
Washington, D.C. 20554**

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| In the Matter of |) | MM Docket No. 96-117 |
| |) | |
| WPVG, Inc. |) | File No. BR-950601VH |
| |) | |
| For Renewal of License |) | |
| for Station WPVG(AM) |) | |
| Funkstown, Maryland |) | |

HEARING DESIGNATION ORDER

Adopted: May 16, 1996

Released: May 22, 1996

By the Assistant Chief, Audio Services Division:

1. The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him for consideration: (a) the captioned application for renewal of license filed by WPVG, Inc. ("WPVG"), licensee of AM Station WPVG, Funkstown, Maryland and (b) the results of an investigation into the station's silent status.¹

2. WPVG suspended operations on October 30, 1994 when the owner of the station's transmitting antenna site ordered the licensee to remove its facilities from the property. WPVG reported that it was in the process of establishing a new tower site, and that it would file the appropriate application when zoning approval was received for the new location. In its June 1, 1995 renewal application WPVG reported that its search for a new site was complicated by the necessity to secure a site that would serve both WPVG's needs while protecting AM Stations WMET (Gaithersburg, Maryland) and WCCS (Homer, Pennsylvania) from interference. On September 12, 1995, WPVG reported that it was negotiating for two possible sites, that it hoped to finalize an agreement for one of these sites by September 24, 1995, and that it expected to file the proper application (FCC Form 301) for this site when the site owner accepted its offer. The special temporary authority approving WPVG's September, 1995 request expired March 27, 1996. A review of the record for this station does not indicate that an application to relocate the station's transmitting antenna has been filed. Further, the licensee has neither notified the Commission that broadcast operations have resumed nor requested further extension of its special temporary authority. Therefore,

¹The Mass Media Bureau has been delegated authority to designate for hearing the renewal of license applications of silent broadcast stations. See Moenkopi Communications, Inc., 8 FCC Rcd 3990 (1993).

WPVG is in apparent violation of Sections 73.1740² and 73.1750³ of the Commission's Rules.

3. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the renewal of license application of WPVG(AM), Funkstown, Maryland IS DESIGNATED FOR HEARING at a time and location to be specified in a subsequent Order, upon the following issues:

- (1) To determine whether WPVG, Inc. has the capability and intent to expeditiously resume the broadcast operations of WPVG(AM), consistent with the Commission's Rules.
- (2) To determine whether WPVG, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (3) To determine, in light of the evidence adduced pursuant to

²Section 73.1740(a)(4) provides that:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30-day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

³Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

4. IT IS FURTHER ORDERED, That, in the event it is determined that grant of the renewal of license application would serve the public interest, convenience and necessity, the grant will be conditioned on the expeditious resumption of operation, the precise period of time to be established in the hearing. Failure to resume operations within the time specified in the condition will result in the cancellation of the license and the deletion of the station's call letters.

5. IT IS FURTHER ORDERED, That WPVG, Inc. must submit to the presiding Administrative Law Judge (with a copy to the Chief, Audio Services Division) within 30 days of the release of this Order information assessing whether the resumption of the station's operations will, including exposure of workers or the general public to levels of RF radiation exceeding specific standards, have a significant environmental impact as defined by 47 C.F.R. § 1.1307.⁴ If WPVG, Inc. determines that the resumption of operations would be subject to the environmental processing guidelines set out in § 1.1307, it must submit an environmental assessment containing the information delineated in 47 C.F.R. § 1.1311. In the event the Mass Media Bureau determines that WPVG, Inc.'s showing confirms that its operations will not have a significant impact upon the quality of the human environment, it shall so inform the presiding Administrative Law Judge. Failure to provide the required information within the specified period will, pursuant to 47 C.F.R. § 73.3568(b), result in the application's dismissal with prejudice for failure to prosecute.

6. IT IS FURTHER ORDERED, That, to inform WPVG, Inc. of the issues specified against it, a copy of this Order will be mailed by certified mail/return receipt requested to:

WPVG, Inc.
10410 Windsor View Drive
Potomac, Maryland 20854

7. IT IS FURTHER ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the LICENSEE, WPVG, Inc.

8. IT IS FURTHER ORDERED, That, to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.221(c) of the Commission's Rules, SHALL FILE with the Commission, in person or by attorney, within twenty (20) days of the receipt of this Order a WRITTEN APPEARANCE stating an intention to appear on the date fixed for hearing and to

⁴See License Renewal Forms & Instructions (March 1995 edition), at pages 6-7, for specific information regarding the required showing.

present evidence on the issues specified in this Order.

9. IT IS FURTHER ORDERED, That the licensee herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Stuart B. Bedell
Assistant Chief, Audio Services Division
Mass Media Bureau